

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WEBSTER CAPITAL FINANCE, INC.,

Plaintiff,

vs.

MILT'S EAGLE, LLC, *et al.*,

Defendants.

Case No. 2:09-cv-01367-RLH-PAL

ORDER

The court conducted a hearing on Plaintiff's Motion to Amend Pretrial Order entered on October 15, 2010, to Add New Discovery Deadlines Consistent with the Trial Date (Dkt. #52). On March 8, 2011, Howard Levine appeared telephonically on behalf of the Plaintiff, and Robert Eaton appeared on behalf of the Defendants.

Although styled a Motion to Amend the Pretrial Order, the motion is actually directed to amending the Discovery Plan and Scheduling Order deadlines. The initial Discovery Plan and Scheduling Order (Dkt. #17) was entered November 13, 2009, and established a March 22, 2010, discovery cutoff. A number of dispositive and non-dispositive motions were filed after the expiration of the initial discovery cutoff. After decision of the dispositive motions, the court entered an Order (Dkt. #30) requiring the parties to file a Joint Pretrial Order by June 15, 2010. On June 15, 2010, Plaintiff requested a Hearing to set a Rule 16 Pretrial Conference to Review Scheduling Issues in Light of the District Judge's Ruling on the Motion for Summary Judgment and Pending Motion to Reconsider (Dkt. #31). Plaintiff unilaterally filed a proposed Pretrial Order October 12, 2010 (Dkt. #43). Additional motions were filed and under submission to the district judge who granted Plaintiff's Second Motion to Amend/Correct the Complaint in an Order (Dkt. #44) entered October 12, 2010. The district judge reviewed Plaintiff's proposed order and entered a pretrial order setting a bench trial for April 11,

2011, and referred the matter to the undersigned to conduct a settlement conference. The same day the Plaintiff filed the Amended Complaint (Dkt. #47), the district judge granted Plaintiff leave to file a Second Amended Complaint January 4, 2011.

Substitution of counsel have been allowed for both sides. A Motion to Strike Defendant's Answer to the Amended Complaint is currently pending, and the parties are clearly not ready for trial.

At the March 8, 2011 hearing, the court canvassed counsel with respect to the discovery that needs to be completed before trial, pointing out that the Discovery Plan and Scheduling Order deadlines had all expired. Counsel for Plaintiff indicated in his motion to strike that he seeks to strike the answer and 16 affirmative defenses filed by the Defendants while in default. If the motion to strike is denied, and/or the affirmative defenses are allowed, Plaintiff will require limited discovery concerning the basis of the affirmative defenses. Plaintiff intends to take the deposition of the individual signators to the guaranty agreement, and possibly one or two other witnesses. Counsel for Defendant had not yet formulated a plan for conducting discovery. At this point neither side anticipates retaining an expert witness. After hearing preliminary representations from counsel, the court directed counsel to conduct a Rule 26(f) conference within 14 days of the hearing, exchange initial disclosures and documents, and propound written discovery within 14 days.

Having reviewed and considered the matter,

IT IS ORDERED that:

1. The parties shall meet and confer and conduct a Rule 26(f) conference, exchange initial disclosures and documents, and propound written discovery no later than March 22, 2011.
2. The parties will prepare a comprehensive Discovery Plan and Scheduling Order to complete the discovery each side deems necessary to prepare this case for trial.
3. While the Motion to Strike (Dkt. #64) is pending, Defendant need not respond to Plaintiff's written discovery requests regarding Defendant's affirmative defenses.
4. Defendants shall have 14 days from decision of the pending Motion to Strike (Dkt. #64) to respond to Plaintiff's written discovery requests with respect to any affirmative defense claims surviving the motion to strike.

- Dated this 22nd day of March, 2011.

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